**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No.717 of 2003

Km. Shilpi Saini ……. Petitioner

Versus

State of Uttaranchal & others ……. Respondents

**Hon'ble Rajesh Tandon J.**

By the present writ petition the petitioner has sought direction in the nature of mandamus to command the respondents to give admission provisionally i.e. till the declaration of result of her compartment examination and allocate her seat according to her place in the merit list in the counselling.

Heard Sri Nagesh Agrawal for the petitioner, Sri R. Dobhal for the respondent no.2 and Standing Counsel for respondent no.1. So far as the respondents no.3 and 4 are concerned notices were issued to them but none appeared for them. Sri R. Dobhal filed counter affidavit alone.

The facts leading to the present writ petition are that a common entrance examination on all India basis for admission to professional and technical programs in the various institute of the counters named as all India Engineering, Pharmacy, and Architecture Entrance Examination (AIEEE)- 2003 was held on 11.5.2003, conducted by the Central Board of Secondary Education under the Chairmanship of the Chairman UGC, New Delhi. On the basis of aforesaid entrance examination a list was prepared and the petitioner has succeeded in the entrance examination as will appear from mark sheet annexure 2. The petitioner has got rank of 1239 and this rank has been described

in the bottom of score card. The petitioner appeared in the counselling on 23.7.03 as woman candidate of OBC grade as per direction in the Amar Ujala published on 7.4.2003. The petitioner has taken all the documents along with advance admission fee of Rs.5,000/- and counselling fee of Rs.400/-.

In order to succeed in the entrance examination one of the criteria was that the candidate has to pass Intermediate examination. Unfortunately petitioner could not succeed in Intermediate examination clearly and she was shown in compartment list. On 23.7.03 when the petitioner has appeared in counselling following order was passed:

*" Km. Shilpi Saini has not submitted the pass certificate of 10+2 pr equivalent examination. The mark sheet which she has brooded shows the case of compartment in subject Mathematics. As such her account has been returned."*

Today matter is fixed for admission. The counsel for the petitioner has produced result of compartment examination. It shows that petitioner has cleared the compartment examination. The result of the compartment examination has not been disputed by the respondent. The result is reproduced as under:

| | |
|---|---|
| Roll No. | 5662876 |
| Name | SHILPI SAINI |
| Mother's name | BINA SAINI |
| Father's name | RAJENDRA KUMAR SAINI |

| SUB CODE | SUB NAME | MARKS | GRADE |
|---|---|---|---|
| 041 | MATHEMATICS | 061 | B2 |

Result: PASS

It is really unfortunate that when the counselling had taken place earlier the petitioner has not qualified intermediate examination in order to get eligibility for admission. Although in the score board she has been declared eligible in Uttaranchal rank and has been given certificate to that effect but since she could not pass intermediate examination in 10+2, therefore, she was on eligible for Ist counselling. Sri R. Dobhal has pointed out that now the counselling is going to be held on 3.9.2003 is respect of the candidate who have been selected for Uttaranchal rank and the petitioner is at liberty to appear in the counselling in 10+2 examination.

The purpose of counselling is not to eliminate a candidate who has been selected in the entrance examination but to give facility to the students so that their entire documents may be verified. Although the petitioner was not qualified in 10+2 at the time of first counselling relating to rank no.1437 but counselling has still not completed and second counselling is going to take place on 3.9.2003 in respect of Uttaranchal rank. Although the first counselling was limited up to the rank of 1437 and the petitioner's rank being 1239, therefore, the petitioner was eligible for first counselling.

Since the score card itself shows that verification of the document shall be made at the time of counselling, therefore, if the document is not completed in the first counselling the authorities concerned are required to permit the petitioner for participating in the second counselling.

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It is a case where at the time of first counselling the petitioner was not eligible but subsequently having passed her compartment examination, she has become eligible. As held by the Apex Court in the case Dularey Lodh vs. The IIIrd Addl. District Judge, Kanpur, A.R.C. 1984 SC 82, that in such circumstances doctrine of Eclipse will apply. The judgement of the Apex Court in Dularey Lodh case

(Supra) has also been followed in the case Kailash Sonkar vs. Maya Devi (1984 )2 SCC 91. In paragraph 34 doctrine of eclipse has been discussed. In the case Dularey Lodh it has been observed as under:

*"Once the bar placed by the 1972 Act, is removed, by virtue of the doctrine of eclipse the decree will revive and become at once operative and executable. The courts below have rightly decided that after the 1976 Amendment Act the decree became legally executable."*

Applying the aforesaid test once the bar has been removed with regard to the eligibility there should not be any impediment to appear in the second counselling as entrance test by which the petitioner has derived right to get admission in the same. It has been shown on her score card as under:-

*'X- State/Category, Rank is provisional subject to verification of documents at the time of counselling.'*

Therefore, she cannot be deprived from admission on account of mere technicalities as it is a well known fact that one has to put hard labour in participating in entrance test and once the petitioner was covered under the eligibility criteria the technicalities should not come in her way.

Article 371 (c) is also a Contitutional mandate for technical education. It reads as under:

*"© an equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in service under the control of the State Government, in respect of all the said areas, subject ot the requirements of the State as a whole."*

The respondents are, therefore, directed to permit the petitioner to appear in the counselling to be held on 3.9.2003. The candidature of the petitioner shall be considered according to the rules and

regulations framed by the respondents. With these observations the writ petition is finally disposed of.

**(Rajesh Tandon, J.)**

27.8.2003
*Dhyani